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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/299,388 04/27/99 FOTLAND

R 99.01

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MANCHESTER NH 03101-2335

EXAMINER
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BAWA, R

ART UNIT	PAPER NUMBER
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DATE MAILED:

02/12/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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# Office Action Summary

Application No.  
**09/299,388**

Applicant(s)  
**Fotland et al.**

Examiner  
**Mr. Raj Bawa**

Group Art Unit  
**1619**



☒ Responsive to communication(s) filed on Nov 9, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-73 is/are pending in the application.

Of the above, claim(s) 38-47, 72, and 73 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-37 and 48-71 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 9

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1919

**Detailed Action**

(1) Applicant's election with traverse of claims 1-37 and 48-71 in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the claims of groups III and II are not material specific. This is not found persuasive because the Examiner is restricting between an apparatus and product made. Clearly, the products can be made by other apparatuses such as spray-drying machines.

The requirement is still deemed proper and is therefore made FINAL.

(2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-37 and 48-71 are rejected under 35 U.S.C. 102(a) as being anticipated by USP 6,032,871 or EP 885,662.

All features of the above-mentioned claims are either identically disclosed by the cited art or clearly inherent to the disclosure thereof.

Also, note that: (I) the cited art is analogous because it pertains to the field of the inventor's endeavor and is also reasonably pertinent to the particular problem with which the inventor is involved. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992); and (ii) a comprising-type language does not exclude other steps, elements or materials. *Cues Inc. vs. Polymer Industries*, USPQ2d 1847 (DC ND GA 1988).

Art Unit: 1919

In light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the above claims are anticipated under 35 U.S.C. 102(b).

No claims are allowed.

(3) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Raj Bawa whose telephone number is (703) -308-2423. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash, can be reached on (703) -308-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Bawa/LR

January 31, 2001



RAJ BAWA, Ph.D.  
PRIMARY EXAMINER